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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MPA/145054

PRELIMINARY RECITALS

Pursuant to a petition filed November 05, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 13, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the Division of Health Care Access and Accountability (DHCAA) correctly denied Petitioner's request for a Speech/Hearing Evaluation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Office of Inspector General via letter
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.

2. On August 29, 2012, Tender Touch Therapy, LLC (Hereinafter referred to as Tender Touch) submitted a request, on behalf of Petitioner, for prior authorization for a speech/hearing evaluation at a cost of \$210.00 and for 26 sessions of speech therapy at a cost of \$3120.00. (Exhibit 4, pg. 6)
3. On October 3, 2012, Tender Touch amended the prior authorization request, stating that the speech therapy was not going to be pursued and that it was only seeking authorization/payment for the speech/hearing evaluation that was completed on August 20, 2012. (Exhibit 4, pg. 25)
4. On October 11, 2012, the DHCAA sent Petitioner a notice indicating that it was denying Tender Touch's request to be reimbursed for the August 20, 2012 evaluation. On that same date the DHCAA sent Tender Touch notice of the denial, as well. (Exhibit 4, pg. 26-31)
5. Petitioner's mother filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 5, 2012. (Exhibit 1)
6. Petitioner's parents are concerned about the unintelligibility of his speech, which might be caused, in part, by a lack of strength in his lips/lip incompetence which was noted by Petitioner's orthodontist. (See Exhibit 1; Testimony of Petitioner's mother)
7. At various times, Petitioner has received speech therapy through Tender Touch, and through his school district, but Petitioner's ability to speak has not improved and has remained unchanged "for awhile". (Testimony of Petitioner's mother; Exhibit 1)
8. On May 26, 2010, Tender Touch evaluated Petitioner, who was six years old at the time, and determined that his lips had a decreased range of motion, decreased strength and decreased coordination. (Exhibit 3, pg. 10)
9. On May 25, 2011, Tender Touch re-evaluated Petitioner and determined that he still had a decreased range of motion and decreased strength in his lips. (Exhibit 3, pg. 14)
10. On August 20, 2012, Tender Touch evaluated Petitioner and determined that the range of motion, strength and coordination of his lips was within functional limits, but not within normal limits. (Exhibit 4, pg. 15)

DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

Speech and language therapy is a Medicaid covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, § DHS107.18(2).

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;

5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

The DHCAA, through the Office of Inspector General (OIG) asserts that it was neither appropriate, nor particularly useful for Tender Touch to conduct a new evaluation of Petitioner’s ability to use his lips because it already knew that he suffered from decreased range of motion, strength and coordination in his lips. The record supports this conclusion, as Petitioner’s mother does not dispute the fact that Petitioner’s intelligibility has not improved, despite his receipt of therapy, and the earlier evaluations in 2010 and 2011 also indicated that Petitioner had issues with lip strength, range of motion and coordination. As the OIG pointed out, given what Tender Touch already knew, it could have used the less costly alternative of conducting a screening interview of Petitioner’s mother.

CONCLUSIONS OF LAW

The DHCAA correctly denied Petitioner's request for authorization of the August 20, 2012 Speech/Hearing evaluation.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

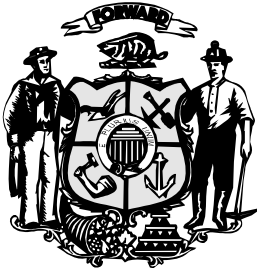
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of January, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 9, 2013.

Division of Health Care Access And Accountability